

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MAY 14 1999

UNITED STATES OF AMERICA,

John J. Morris Jr.
CLERK

Plaintiff-Respondent,

v.

No. CIV-99-0510 JP/JHG
CR-94-533 JP

VERONICA FRANCISCO,

Defendant-Movant.

MEMORANDUM OPINION AND ORDER

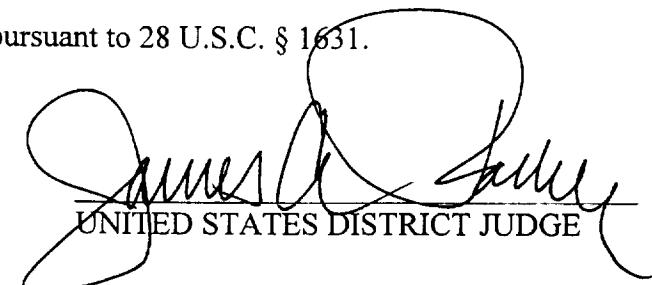
This matter is before the Court sua sponte for preliminary consideration of Defendant's "Motion Pursuant to 28 U.S.C. § 2241." Rule 4(b) Governing Section 2255 Proceedings. The motion was transferred to this Court from the United States District Court for the Northern District of California on grounds that Defendant must assert her claims in the court where she was convicted and sentenced. This Court concurs in the reasoning of the transfer order and construes Defendant's motion as a motion under 28 U.S.C. § 2255.

Defendant has filed other such motions previously. *United States v. Francisco*, No. CV-96-0339 JP/WWD (CR-94-533 JP); *United States v. Francisco*, No. CV-97-0017 JP/WWD (CR-94-533 JP). *See Duhart v. Carlson*, 469 F.2d 471, 473 (10th Cir. 1972) (a court may take judicial notice of its own records). Under the 1996 amendments to 28 U.S.C. §§ 2244 and 2255, before a defendant may file or prosecute a second or successive § 2255 motion, an order authorizing the filing must be issued by the appropriate court of appeals. If a defendant does not provide the district court with an authorizing order, the § 2255 motion must be transferred to the court of appeals for consideration of the request for authorization. *Coleman v. United States*, 106 F.3d 339, 341 (10th Cir. 1997); 28

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U.S.C. § 1631. The instant motion is Defendant's second and is not accompanied by an authorizing order. This proceeding will be transferred to the United States Court of Appeals for the Tenth Circuit pursuant to 28 U.S.C. § 1631.

IT IS THEREFORE ORDERED that the Clerk is directed to transfer this case to the United States Court of Appeals for the Tenth Circuit pursuant to 28 U.S.C. § 1631.



James L. Salter
UNITED STATES DISTRICT JUDGE